RIVKINRADLER

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MEMO ENDORSED

Conference on 8/10/05 @ 9:45AM

July 12, 2005

SO ORDERED:
Date: 7/13/05
Richard M. Berman, U.S.D.J.

VIA OVERNIGHT MAIL

Judge Richard M. Berman
United States District Court
Southern District of New York
500 Pearl Street
New York, New York 10007

USDC SDNY
DOCUMENT
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DATE FILED: 7/13/05

Re: ***Cadwalader, Wickersham & Taft, LLP., v. OneBeacon America Insurance Company, Seaton Insurance Company and Cavell USA Inc.***
05 Civ. 4244 (RMB) (RLE)

Honorable Sir:

This office represents the defendants in the above-referenced litigation. We write to request that the Court schedule a pre-motion conference on our clients' proposed Motion to Dismiss the unfair business practices and tortious interference with contract claims in the Complaint under F.R.C.P. §12(b)(6), set a motion briefing schedule, and that the Court extend defendant's time to answer the Complaint pending resolution of the motion to dismiss.

Cadwalader Wickersham & Taft v. Onebeacon America Insurance Company et al. Doc. 10

When we appeared before the Court for a scheduling conference on June 20, 2005, the parties mutually requested that this matter be referred to a Magistrate for a settlement conference. Magistrate Judge Ellis had scheduled a conference for July 29, 2005. We remain hopeful that the case will be resolved at that time. However, we must prepare for the contingency that it may not.

At present, plaintiff, pro se, has granted the defendants the courtesy of extending their time to answer through July 22, 2005, but had declined our request for a further extension beyond the July 29, 2005 conference date with Magistrate Ellis, notwithstanding the fact that both sides have agreed that it was not necessary to have an answer from defendants prior to holding a settlement conference.

This office was only retained a day or two before the June 20, 2005 scheduling conference before the Court and had not yet had time to analyze the Complaint for a pre-answer motion, which is why this application was not made at that time.

The Complaint is brought by the plaintiff law firm against our clients (two insurance carriers and their claims administrator), for the payment of certain fees accrued in the ostensible rendering of legal services, and other damages.

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In the Complaint, plaintiff claims that the defendants violated statutes prohibiting unfair business practices. Those statutes are not applicable to the current dispute between the parties as a matter of law, as the parties' association was premised upon a specific, contractual relationship.

Moreover, plaintiff claims that defendant Cavell USA, the claims administrator, is liable for its alleged tortious interference with contractual relations between plaintiff and the insurance companies. This claim is also legally infirmed, as no claim for tortious interference can exist against the agent of either party to the contract at issue.

In the event that this matter is not resolved on July 29, 2005 before Magistrate Judge Ellis by way of a mediated settlement, which we believe it may well be if each side is reasonable, then a pre-answer motion would serve to limit the issues in the case by paring down legally insufficient claims and reducing the number of parties.

Accordingly, it is respectfully requested that the Court set a date for a pre-motion conference after July 29, 2005 for the purpose of setting a briefing schedule and that defendants' time to answer the Complaint be extended pending the disposition of any ensuing motion.

The Court's courtesy and consideration of these request is greatly appreciated.

Very truly yours,

RIVKIN RADLER LLP

Peter C. Contino

PCC/bas
cc: John F. Finnegan, Esq.
Cadwalader, Wickersham & Taft, LLP.